

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

11-CR-602

JOSEPH JENKINS,

Defendant.
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Transcript of *SENTENCING* held on
November 12, 2014, at the James Hanley Federal Building,
100 South Clinton Street, Syracuse, New York,
the HONORABLE GLENN T. SUDDABY, Presiding.

A P P E A R A N C E S

For Plaintiff: OFFICE OF THE UNITED STATES ATTORNEY
100 South Clinton Street
James Hanley Federal Building
Syracuse, New York 13261
BY: TAMARA THOMSON, Esq.
Assistant United States Attorney

For Defendant: OFFICE OF THE FEDERAL PUBLIC DEFENDER
The Clinton Exchange - 3rd Floor
4 Clinton Square
Syracuse, New York 13202
BY: LISA PEEBLES, ESQ.

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1 (Open court, 10:05 a.m.)

2 THE CLERK: Case number 5:11-CR-602, United States
3 of America versus Joseph Vincent Jenkins.

4 Counsel, please note your appearance for the
5 record.

6 MS. THOMSON: Good morning, your Honor, Tamara
7 Thomson and Gwen Carroll on behalf of the United States and
8 also in the courtroom is the case agent Chad Willard and the
9 Canadian case agent Detective Constable Kip Wohlert
10 (phonetic).

11 THE COURT: Good morning.

12 MS. PEEBLES: Good morning, your Honor, Lisa
13 Peebles appearing on behalf of Joseph Jenkins. Mr. Jenkins
14 is also present.

15 THE COURT: Good morning.

16 We're here for sentencing this morning.

17 Are counsel ready to proceed?

18 MS. THOMSON: Yes, your Honor.

19 MS. PEEBLES: Yes.

20 THE COURT: Ms. Peebles, Mr. Jenkins submitted a
21 request this past week -- it was filed on November 5th --
22 concerning a new attorney. I don't know if you had an
23 opportunity to discuss that with him before this morning.

24 MS. PEEBLES: Well, Judge, I had an opportunity to
25 review the document and he and I had spoken at length on the

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1 phone prior to him filing that request. And the indication
2 that I'm getting today is that Mr. Jenkins is not satisfied
3 with the submissions that I've put in on his behalf to this
4 point. So I'll leave it up to the Court as to what the Court
5 would like to do.

6 I know Mr. Jenkins is objecting to much of the,
7 first and foremost, the special conditions of supervised
8 release and, in addition, much of what's contained in the
9 presentence report and his belief that the Court should
10 recuse itself from hearing the sentencing in this matter and
11 he filed a supplemental sentencing submission on
12 September 9th of 2014, which I believe has been docketed with
13 the Court. I had an opportunity to review all those
14 submissions by Mr. Jenkins.

15 I have my own objections, to some degree, and I put
16 in documents on behalf of Mr. Jenkins but, as far as what the
17 Court intends to do this morning, I would leave it up to your
18 discretion.

19 THE COURT: Okay. Thank you.

20 Mr. Jenkins, you've submitted this motion and
21 you've requested a new attorney. We're at sentencing at this
22 point. All the submissions by defense counsel have been
23 made. You have made submissions. I've reviewed them.

24 Are you prepared to retain counsel before
25 proceeding with sentencing?

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1 THE DEFENDANT: I'm not really sure I can retain
2 counsel at this point.

3 THE COURT: Well, then, at this point what we're
4 going to do is I'm going to proceed with sentencing. All the
5 submissions have been made. You'll have an opportunity to be
6 heard. I reviewed all of your submissions and, if there's
7 anything else that you'd like to add this morning, certainly
8 you'll have an opportunity to do that. So we're going to
9 proceed.

10 THE DEFENDANT: Well, I mean, I've pretty much
11 demanded that -- I don't feel you have any right to sentence
12 me after all these antics and there's a lot of screwing
13 around here and I don't agree with it and I've repeatedly
14 asked Ms. Peebles here to file a petition to have you removed
15 and I think that there's grounds for it. I've been going
16 over submissions the last few weeks and court transcripts. I
17 mean, that's what I want. I'd rather -- I mean, you've set a
18 record that -- I mean, she hasn't done what I've asked her to
19 do. We've been going around for a few months arguing.

20 THE COURT: Mr. Jenkins, no attorney's done --

21 THE DEFENDANT: What's that?

22 THE COURT: No attorney's done what you've asked
23 them to do, according to you, despite being represented by a
24 number of different counselors. You started with Mr. Parry.
25 You referred to him as an idiot and not knowing what he was

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1 doing. The Court sent numerous attorneys to meet with you in
2 the jail so you could retain someone. You made derogatory
3 comments about the people that were very well-regarded in
4 this community, legal community, as far as representing
5 federal defendants. Then we provided you with a list of CJA
6 attorneys that are admitted to the Northern District of
7 New York to give you an opportunity to retain somebody. You
8 did retain an Aaron Goldsmith out of New York who represented
9 you at trial and then he requested to be relieved because of
10 his irreconcilable differences with you and not being able to
11 get along with you. And then, you know, the federal public
12 defender's office was assigned by Judge Peebles and has
13 represented you, in this Court's view, in a very capable and
14 competent manner and here we are again.

15 So, sir, you can demand all you want. You can
16 criticize. You can blame everybody else. You can say it's
17 the attorney's fault. But we're at a point, sir, where we're
18 going to proceed with sentencing. You have counsel. You've
19 been represented well and you've had an opportunity to submit
20 everything that you've wanted to to this Court and I've
21 reviewed everything that you submitted, despite its
22 derogatory tone and comments, disrespectful comments to this
23 Court and everybody else that you've had to deal with, sir.

24 So, you'll be given a full opportunity to say
25 anything you want. If you're not going to retain somebody,

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1 certainly this Court is not going appoint another attorney to
2 represent you at this point. So you --

3 THE DEFENDANT: At this point I don't --

4 THE COURT: So you can proceed by representing
5 yourself today. That's up to you, sir, but we're going to
6 proceed with sentencing.

7 THE DEFENDANT: Well, at this point, then, I
8 request my other attorney, Mr. Goldsmith, be ordered back on
9 the case.

10 THE COURT: Sir, he requested -- he requested -- to
11 be relieved because he could not get along with you and did
12 not agree with the things that you were demanding that he do.

13 THE DEFENDANT: Because I insisted he did some
14 work.

15 THE COURT: Okay.

16 THE DEFENDANT: And to fix his mistakes.

17 THE COURT: Okay.

18 THE DEFENDANT: But I didn't agree with him being
19 released.

20 THE COURT: Well, sir, you didn't have to agree to
21 have him released. He requested and the Court granted him,
22 based on the motion that he made and the papers that he put
23 in in this matter. So we're going to proceed.

24 Counsel, have you received the presentence report
25 that was dated April 11th, 2014, and the addendum which is

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1 dated May 20th, 2014?

2 Government receive those?

3 MS. THOMSON: Yes, your Honor.

4 THE COURT: Ms. Peebles, did you receive those?

5 MS. PEEBLES: I have, your Honor, and Mr. Jenkins
6 has just voiced his concern that he disagrees with everything
7 that I'm doing and I'm in a bit of conundrum right now as to
8 how I should proceed.

9 THE COURT: I'm just going to ask you some
10 background questions as to what you did with Mr. Jenkins and
11 then we'll let him do what he'd like to do with regard to
12 sentencing.

13 MS. PEEBLES: Yes, Judge.

14 THE COURT: Did you receive those documents?

15 MS. PEEBLES: I did.

16 THE COURT: And did you have an opportunity to
17 review them or share them with Mr. Jenkins?

18 MS. PEEBLES: I have.

19 THE COURT: Very well. Thank you.

20 Mr. Jenkins, did you see those documents, did you
21 review them, the presentence report and the addendum?

22 THE DEFENDANT: I mean, there's inaccurate
23 information in there.

24 THE COURT: That was not my question, sir.

25 Did you see those documents and did you review

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1 them?

2 THE DEFENDANT: The presentence report, yes.

3 THE COURT: And did you see the addendum, sir,
4 which was dated May 20th, 2014?

5 THE DEFENDANT: Yes.

6 THE COURT: Very well.

7 The Court has also received a letter from Bonnie
8 and George Jenkins, which was dated May 25th, 2014.

9 Did the government receive a copy of that
10 correspondence?

11 MS. THOMSON: Yes, your Honor.

12 THE COURT: Very well.

13 Does the government have any objections to the
14 facts as stated in the presentence report?

15 MS. THOMSON: No, your Honor.

16 THE COURT: Ms. Peebles, did you have an
17 opportunity to look at the facts as stated in the presentence
18 report and the review it with Mr. Jenkins?

19 MS. PEEBLES: Yes, your Honor.

20 THE COURT: Now, Mr. Jenkins, you have objections
21 to the facts as stated in the presentence report; is that
22 correct?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you want to make any further
25 record as to what those objections are at this point? You

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1 submitted some things in writing. Do you want to add
2 anything?

3 THE DEFENDANT: I mean, I think -- I just think
4 this whole thing is ridiculous and I request a competent
5 attorney to -- this is foolish. I mean, I don't -- I don't
6 really know what you're doing here. I mean, I...

7 THE COURT: My question is, sir: Do you have
8 objections to the facts as stated --

9 THE DEFENDANT: I object to everything. Yes, I
10 object to everything.

11 THE COURT: Very well.

12 Counsel for the government, any objections to the
13 offense level calculations in the presentence report?

14 MS. THOMSON: No, your Honor, with the noted
15 addition for obstruction. The government calculated it in
16 two ways. It depends on whether the Court accepts that.

17 THE COURT: The government intends to sentence with
18 the obstruction of justice?

19 MS. THOMSON: Yes, your Honor.

20 THE DEFENDANT: I obstructed justice?

21 THE COURT: Ms. Peebles.

22 MS. PEEBLES: I would like to be heard on that but
23 I'm not entirely sure whether Mr. Jenkins is wanting me to
24 speak on his behalf.

25 THE COURT: Mr. Jenkins, would you like Ms. Peebles

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1 to be heard on the offense level calculation with regard to
2 the obstruction of justice enhancement or do you want to
3 address it yourself, sir?

4 THE DEFENDANT: I think I probably should address
5 it myself, too, but I'd like to hear what she has to say.

6 THE COURT: She's working with you so you're going
7 to have to give her permission, if you want her to address
8 this issue.

9 MS. PEEBLES: Your Honor, I had an opportunity to
10 review the trial testimony. It's my understanding that the
11 basis for this 2-level enhancement is as a result of Mr.
12 Jenkins taking the stand and testifying. I don't see where
13 it would warrant a 2-level adjustment.

14 What I saw when I was reading through the
15 transcript, and my understanding of his testimony, was,
16 essentially, him agreeing with everything that the Canadian
17 authorities said when he was crossing the United States
18 border, aside from the fact that he was being -- acted
19 nervous and agitated. Other than that, it appeared to me
20 that his testimony coincided with everything that the
21 Canadian authorities were testifying to during the border
22 search.

23 I didn't see anything in there where he actually
24 denied downloading or possessing or transferring child
25 pornography. It seemed to me that he was talking about

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1 various people having potential access to his computer and
2 hard drives. Then they played a phone call for him, which my
3 understanding of the phone call was the conversation he was
4 having with his parents concerning the number of images and
5 suggesting that there weren't nearly as many images as was
6 initially portrayed.

7 I don't see, your Honor, where there's a
8 justification for a 2-level enhancement based on that
9 testimony of Mr. Jenkins. It appeared to me that he was
10 essentially in agreement. And I can see in cases where an
11 individual may take the stand and say something totally
12 contrary to what's being offered by the government and the
13 jury rejects that testimony. But in this instance, I didn't
14 see it when I reviewed the trial transcript.

15 So, it seems to me that it would be unfair to
16 enhance Mr. Jenkins' sentence as a result -- or his Guideline
17 range -- as a result of the testimony that I read during the
18 trial transcripts.

19 THE COURT: Government like to be heard on this
20 issue?

21 MS. THOMSON: Your Honor, I did lay out in the
22 government's sentencing memorandum three particular examples
23 that the government believes were examples of the defendant
24 committing perjury and providing material and false
25 information to the Court and jury. I can go over those

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1 examples or rest on the papers.

2 THE COURT: Why don't you go ahead and make your
3 record.

4 MS. THOMSON: Your Honor, with regard to the first
5 example, the defendant testified on cross-examination that he
6 did not have the three thumb drives, that the thumb drives
7 found in the trunk he knew nothing about them. He didn't
8 have them. They were not his. He was asked repeatedly on
9 cross-examination whether those thumb drives were in his
10 truck and repeatedly said that they were not, that he had no
11 knowledge of them and that they were not his.

12 However, during the testimony of the forensic
13 examiner Brian Braisted, the examiner testified that those
14 thumb drives had been previously connected to the laptop that
15 was entered into evidence and, so, the defendant's claim that
16 he has no knowledge, that these were not his flies in the
17 face of the evidence that was established in the trial, not
18 to mention the fact that the thumb drives were found in his
19 truck, that he was the only one driving and in his bag that
20 he acknowledged was his.

21 The second example cited in my memorandum is that
22 on direct examination, he testified that his attorney told
23 him to get rid of his cellular phone and his attorney told
24 him to not show up for his October trial date. He stated
25 that his attorney advised him to break the law and to not go

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1 to his own trial in October.

2 However, later in his testimony, when asked again
3 whether his attorney instructed him not to appear on
4 October 18, 2010, as he had previously testified, he stated
5 that he wasn't told to appear. It's different. The
6 government sought use of that information in our motion in
7 limines and our pretrial discussions of the failure to appear
8 as consciousness of guilt. So the defendant tried to tailor
9 his testimony to fit both circumstances and to try to take
10 away from the evidence establishing consciousness of guilt.

11 And, third and final, and very important during
12 this trial was the defendant testified that he had employees
13 working for his company, that those employees would come into
14 his home to obtain work orders via fax and email and they
15 would check his email and would check his fax machine at
16 least once a day when he was on vacation. The purpose of his
17 testimony was clear, to show that other people had access to
18 his computer and had access to his home and that those other
19 people could have been responsible for the child pornography
20 that was found on his computer and on his media.

21 However, on cross-examination, the defendant
22 indicated that -- he was asked about his prior testimony in
23 Canada and in Canada when he was complaining about a delay
24 and about the negative impact that the delay and a speedy
25 trial had on him, he indicated that the work that would be

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1 done with the computers would be work that would be done by
2 him and that he had to actually hire people to do that work
3 because of the restriction that he had without -- that he
4 couldn't use the computer in Canada. Clearly, he tailored
5 his testimony to fit both circumstances.

6 In Canada it would be beneficial to show how he was
7 prejudiced by not being allowed access to his computer. So
8 in that forum he indicated, I don't have anybody else, it's
9 just me. But during the trial, he tailored his testimony to
10 indicate that there was lots of people that checked his
11 computers. Both of them are not true.

12 THE COURT: Okay. Mr. Jenkins, would you like to
13 be heard on this matter before we move on?

14 MS. PEEBLES: Judge, if I might for a moment.
15 There were only two thumb drives that had child pornography
16 on it, my understanding was the 4 gigabyte and the 8
17 gigabyte. And the way I read his testimony was that it
18 seemed as though he said he didn't have knowledge of the
19 thumb drive. I did not see that there was a denial of
20 ownership of the thumb drives, only a denial of whether they
21 were actually in the truck, that he understood them to be in
22 the truck.

23 But having said that, again, as far as not showing
24 up to the Canadian appearance, the way I read from the
25 lawyer, it almost laid out three options; one which would be

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1 if you didn't show up, they'd issue a warrant, as long as you
2 didn't come back in the country. That was his
3 interpretation. I'm not sure how that was material to the
4 prosecution's case and how that would be a material
5 misstatement, as it didn't have anything to do with whether
6 or not he had child pornography on the computer or the thumb
7 drives.

8 And then, as far as other people in and out and
9 having access, again, Judge, I read the testimony on
10 cross-examination and direct and, again, I don't see how that
11 was material to whether or not he actually was the person who
12 downloaded the child pornography on the hard drive, other
13 than -- I mean, to suggest for a minute that no one would
14 ever possibly have access to his computer, I don't think he
15 said that when he was in Canada trying to explain how his
16 business would be prejudiced.

17 So, again, Judge, I'm familiar with the testimony.
18 I don't see where it warrants a 2-level obstruction.

19 Thank you.

20 THE COURT: Thank you.

21 Mr. Jenkins.

22 THE DEFENDANT: I didn't have an opportunity to
23 write all that down. But that search was done out of my
24 sight. I didn't see them pull any thumb drives out of any
25 bags. They did connect them to the computers themselves.

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1 The government's -- the government didn't provide -- I
2 specifically requested -- and you ignored them and the
3 government ignored them -- the original CDs from -- that were
4 supposed to be turned over to my Canadian attorney. I don't
5 know if he got them or not. I think he did. That was
6 supposed to have all the information, technical information
7 on it and I never got any of that. Those thumb drives were
8 not connected to the computer before the Canadian government.
9 The whole concept is absurd. The government didn't provide
10 the dates. It's readily accessible information. You don't
11 have to be a forensic scientist to figure out when it was.
12 But the government -- there should have been first and last
13 dates. The government didn't provide them because the
14 Canadians plugged them in after my arrest. There's files on
15 the thumb drive that are dated after my arrest. Nothing
16 makes sense here and nothing -- none of it came out at trial.
17 That's one of the things -- that's why I demanded a new
18 attorney. I wanted a retrial. None of it came out. None of
19 that came out right at trial and it wasn't done to my
20 satisfaction. And the government suppressed --

21 THE COURT: Mr. Jenkins --

22 THE DEFENDANT: -- paperwork. They got --

23 THE COURT: Mr. Jenkins, I'm asking you about your
24 trial testimony and the obstruction of justice enhancement.

25 THE DEFENDANT: I have to --

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1 THE COURT: You'll be given an opportunity to
2 discuss anything else afterwards.

3 Right now, sir, do you have anything else to say
4 about the obstruction of justice enhancement?

5 THE DEFENDANT: I disagree with it. The
6 testimony -- the government is apparently trying to
7 misconstrue some testimony I gave in Canada, which is pretty
8 much what they do. I just said that we had to switch jobs
9 around. I didn't say I had the -- I don't remember exactly
10 what I said. I don't believe I said I had to hire somebody,
11 but I just had to pay people. We had to switch jobs. I know
12 what they're trying to do. They're just trying to
13 misconstrue it and it's...

14 THE COURT: Okay, sir, are you done with regard to
15 that?

16 THE DEFENDANT: Yeah, I'm done with that.

17 THE COURT: Well, the Court heard the testimony.
18 The Court sat through the trial, obviously, and it was clear
19 to this Court that Mr. Jenkins was trying to, at several
20 points in his testimony, suggest that other people were
21 responsible. If there was child pornography on his computer,
22 that he certainly was not responsible and that he did perjure
23 himself at different instances, including the three that the
24 government has cited and in the Court's view other instances
25 where he denied being online at certain times and he was

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1 challenged by the government with the forensic records of his
2 computer of times that he went on the computer and signed on
3 with certain passwords, names --

4 THE DEFENDANT: There were no --

5 THE COURT: -- and suggested that there was, you
6 know, a download of child pornography right after that time
7 and him denying that he had done that.

8 So there was testimony, in this Court's view, at
9 various instances throughout his testimony at trial where he
10 perjured himself. I think it was obvious to this Court and
11 certainly obvious to the jury.

12 The criminal history computation.

13 The government have any objection?

14 MS. THOMSON: No, your Honor.

15 THE COURT: Ms. Peebles?

16 MS. PEEBLES: No, your Honor.

17 THE COURT: Mr. Jenkins, you want to be heard on
18 the criminal history computation?

19 THE DEFENDANT: (No response.)

20 THE COURT: Do you have any objection --

21 THE DEFENDANT: I'm sorry?

22 THE COURT: -- to your criminal history
23 computation? Do you understand what that is?

24 (Discussion held off the record between defendant
25 and attorney.)

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1 THE DEFENDANT: No.

2 THE COURT: No objection, okay, very well.

3 The government?

4 MS. THOMSON: Thank you, your Honor.

5 During this trial, when the defendant was
6 cross-examined with regard to a recorded phone call, a phone
7 call between the defendant and his father, I think the father
8 made a comment that does the very best job of summarizing the
9 very point that Mr. Jenkins is missing.

10 During this telephone call the defendant is arguing
11 with his father, a father who has supported him throughout
12 his case. He continues to argue with him and the father says
13 quite poignantly: You should have never had that crap with
14 you and squarely tells the defendant that the position that
15 he's in is of his own doing. That is the philosophy of the
16 father in this case.

17 The philosophy of the son in this case is that he
18 wants to blame everybody else. It's everyone else's fault
19 but his. He wants it to be about international conspiracies,
20 about falsifying evidence, evidence that he indicates in his
21 submission on September 9, 2014, that the government's case
22 "required evidence to be falsified so their 'special fagots'
23 did as much".

24 According to the defendant, this case is about this
25 honorable Court conspiring with the government. He indicates

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1 in his November 5th, 2014, submission, "with no idiot lawyer
2 to sabotage the defense, the Court itself began harassing me
3 for several months obstructing, ignoring requests or agreed
4 with whatever incoherent nonsense the government spewed
5 issuing decisions and orders simply to prejudice and gain
6 advantages (prosecutorial) and also praised the dismissed and
7 incompetent attorney for among other things 'an outstanding
8 job'". That's what the defendant wants it to be about.

9 We've spent a lot of time with dealing with those
10 accusations with the complaint about the double jeopardy, the
11 complaint about the case being in the United States instead
12 of Canada. We've spent a lot of time going over multiple
13 attorneys, going over multiple proceedings.

14 At the end of the day what this case is about is a
15 man, the defendant, amassing a collection of child
16 pornography, a collection that was so dear to him he couldn't
17 even take a vacation without having it out of his sight, a
18 collection that included the rape, abuse of children. The
19 Court saw those images and the Court only saw a small sliver
20 because that's what was presented at trial to spare the jury
21 and to spare the Court from having to look at his collection,
22 the images he was interested in. That's what this case is
23 about.

24 The defendant, as I indicated, wants it to be about
25 all those things but he takes it a step even further, a step

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1 that is so low it's hard to even describe.

2 In his September 9, 2014, submission on Page 2 the
3 defendant takes it to the level of indicating, with regard to
4 what was on his computer, "most, by way are 'webcam' videos,
5 they (victims) intentionally produced and broadcast
6 (themselves) over the internet and should be prosecuted
7 (themselves)".

8 So now it's the children's fault. It's their fault
9 that he had access and made a collection of their abuse.
10 That's a low I haven't really seen yet.

11 But while we're talking about that, the defendant
12 also makes numerous claims and complaints about double
13 jeopardy, about how unfair it is that he was tried in a court
14 in the United States. He complains that if the matter had
15 stayed in Canada, he would have had exposure that was ten
16 times less than the exposure that he has in the United
17 States.

18 Your Honor, that is akin to killing your parents
19 and crying orphan. The matter didn't remain in Canada
20 because he chose not to show up for those charges. That was
21 his choice and he can blame the attorneys and he can blame
22 the system all he wants but, like his father indicated, you
23 should have never had that crap with you and when you did,
24 you should have dealt with it, but he didn't, and that's why
25 we're here.

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1 And after you remove all of the nonsense, all of
2 the antics, all of the baseless allegations that we've
3 listened to for years, I hope the Court goes back to the core
4 of why we're here. We're here because of his collection of
5 child pornography and, because of that collection and because
6 of all the factors that the Court I know will consider, the
7 sentence should reflect the seriousness of the crime, afford
8 adequate deterrent and, most importantly, show the defendant
9 that he only has himself to blame.

10 The government, as noted in the sentencing
11 memorandum, is seeking a sentence within the Guideline range,
12 as well as the other imposition of restitution as the parties
13 have carefully briefed.

14 We're also seeking the imposition of a fine in the
15 amount of \$20,000 and, of course, the imposition of the
16 special assessment of \$200.

17 Thank you.

18 THE COURT: Okay. Mr. Jenkins, is it your
19 intention to allow Ms. Peebles to be heard before you're
20 heard?

21 THE DEFENDANT: Yes.

22 THE COURT: Go ahead, Ms. Peebles.

23 MS. PEEBLES: Your Honor, in my sentencing
24 submission to the Court, I lay out the basis for our request
25 to ask the Court to depart or vary from the Guideline, which

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1 now has been increased by two levels for the obstruction,
2 primarily because of the culpability of Mr. Jenkins in
3 connection with the actual possession and transport of child
4 pornography.

5 I know the Court's aware of many individuals that
6 come before this Court that have been charged with similar
7 types of acts and that is the downloading and receipt of
8 child pornography. Typically what we find are tens of
9 thousands of images, sometimes more, a hundred thousand
10 images, as a result of the peer-to-peer software sharing
11 system. We see distribution. We see multiple efforts at
12 sharing and chat rooms. We don't have any of that in this
13 case.

14 Now, if we leave aside all of the, shall we
15 classify them as antics by Mr. Jenkins and where we are today
16 and some of his concerns with regard to the proceedings, if
17 we leave that aside and look at the actual conduct for what
18 he's here today to be sentenced for, I would suggest that he
19 is at a level, your Honor, on a continuum that is much less
20 than those that are typically before this Court.

21 I think, your Honor, all things considered, that
22 the sentencing enhancements as we laid out in our sentencing
23 submissions really overinflate the culpability of Mr. Jenkins
24 in the actual possession and transport of child pornography.

25 I know that there are some issues concerning,

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1 obviously, his concern with the proceeding and the process
2 and how we wound up here. But I will say this. I've seen
3 and I've read the letter from his Canadian attorney,
4 Mr. Edgley, and I refer to it in my sentencing submission and
5 it did say: The third option is that you simply not return
6 to Canada, in which case there would be a bench warrant
7 issued for your arrest and if you ever tried to come to
8 Canada again, you would be subject to arrest pursuant to this
9 warrant and also the money that was posted for bail would be
10 forfeited to her Majesty the Queen and, as we discussed, he
11 would also get his lawyer fee out of that money.

12 So, he laid it out as option one, option two, and
13 option three. Again, your Honor, I think in hindsight,
14 Mr. Jenkins would have chose to go to his trial and attend
15 the proceedings in Canada. It would have been the better
16 choice. But he didn't do that for, I believe, the reasons
17 set forth in the letter sent by Mr. Edgley.

18 Having said that, your Honor, I know Mr. Jenkins
19 has been held in local custody. He's been subjected to a
20 competency evaluation. The psychologist did find that he was
21 competent and that was before the Court. And I don't think,
22 your Honor, that sitting in the local -- well, I believe
23 sitting in a local jail for a three-year period has been a
24 struggle for Mr. Jenkins and he's moved around from place to
25 place. It's been a difficult three years for him. This case

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1 has been pending literally from Canada for a five-year
2 period. He was a reputable electrician with no prior
3 criminal history.

4 I think the fact that he had no prior criminal
5 history, your Honor, suggests that the chances that he would
6 be a recidivist is very minimal and I think, your Honor, this
7 entire process has taken its toll on him to the point where
8 we are where we are today and his ability to think clearly
9 and make articulate arguments has somewhat been clouded
10 because of the way in which the process has all unfolded.

11 I'm not, again, Judge, suggesting that there's
12 merit to some of the arguments that Mr. Jenkins wanted to
13 bring forth with but he's filed those supplemental motions on
14 his own.

15 But I do think, if the Court considers exactly what
16 he was convicted of by the jury, that a sentence of no more
17 than 5 years would be appropriate in this case because of his
18 lack of criminal history, because of the continuum where he
19 falls, and, also, your Honor, because of the circumstances in
20 which he wound up here.

21 As far as the restitution goes, your Honor, I think
22 what we've set out in our supplemental sentencing memo lays
23 down the methodology that we believe the Court should implore
24 in terms of deciding what the appropriate amount is in this
25 case, taking into account the *Paroline* factors and the basis

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1 for those arguments, the least amount would be nontrivial in
2 our opinion based on the assessment of taking into account
3 the approach that the Supreme Court suggested, looking at
4 future individual downloaders and also past downloaders in
5 combination are factors that the Court needs to consider in
6 addition to the relative culpability of Mr. Jenkins, as
7 opposed to those that produce and share and distribute those
8 images. And we believe an amount of no more than \$5,000 per
9 victim in this case would certainly satisfy the *Paroline*
10 factors and that's what we're asking the Court to consider.

11 As far as the fine amount, your Honor, \$20,000 for
12 Mr. Jenkins who doesn't have the resources at this point in
13 time and the reason he didn't fill out the financial
14 affidavit --

15 THE COURT: How do we know that? How do we know
16 what his resources are? He's never cooperated to fill out a
17 financial affidavit.

18 MS. PEEBLES: Well, now he's in a catch 22 since we
19 have the perjury charges pending and, as his lawyer, we would
20 have to advise him to invoke his Fifth Amendment right, which
21 we have, and that's an issue.

22 THE COURT: I understand that.

23 MS. PEEBLES: Perhaps the Court could reserve
24 decision on the amount of the fine to impose until the
25 perjury charges are addressed by the district court and

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1 again, Judge, I believe Mr. Jenkins is in somewhat of a catch
2 22 on that for the --

3 THE COURT: Situation created by who?

4 THE DEFENDANT: You.

5 THE COURT: There you go.

6 Go ahead, Ms. Peebles.

7 MS. PEEBLES: Yeah. So with that having been said,
8 your Honor, I would just ask the Court to consider our
9 submissions in that regard and, also, to impose a sentence of
10 no more than 5 years.

11 THE COURT: Thank you, Ms. Peebles.

12 Mr. Jenkins, would you like to be heard, sir?

13 THE DEFENDANT: Yeah, I don't think it's...

14 THE COURT: If you want to be heard.

15 THE DEFENDANT: I don't remember what the
16 prosecutor said now. I kind of forgot. I haven't been able
17 to write anything down.

18 THE COURT: Sir, if you want to be heard, please
19 stand up and speak into the microphone. You can be heard.

20 THE DEFENDANT: You said a lot of stuff about
21 downloading, getting stuff on the computer. That was never
22 proved before or after the other. I'm just so frustrated
23 right now I can't even think. I couldn't write stuff down
24 when she was talking. Whatever -- whatever finances they did
25 put on this, the government said they subpoenaed that stuff.

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1 It wasn't to be used for sentencing purposes or restitution.
2 So I object to anything that they refer to on there being
3 used that would determine restitution. And I can't remember
4 what she said now.

5 (Discussion held off the record.)

6 THE DEFENDANT: You know, whatever I say doesn't
7 make any difference. You made up your mind a long time ago.
8 You made up your mind a long time ago. This is just -- this
9 is just ridiculous. I object to the whole thing.

10 THE COURT: Are you done, sir?

11 THE DEFENDANT: I'm done.

12 THE COURT: Okay. The Court's prepared to impose
13 sentence.

14 The Court has reviewed and considered all the
15 pertinent information, including, but not limited to, the
16 presentence investigation report, the addendum, submissions
17 by counsel, the Sentencing Guidelines manual, as well as the
18 factors outlined in 18, U.S.C., Section 3553(a).

19 The Court adopts the factual information and the
20 Guideline applications contained in the presentence
21 investigation report with the following exception: The Court
22 finds the defendant obstructed justice, the administration of
23 justice at trial as defined in USSG, Section 3C1.1 and,
24 therefore, a 2-level enhancement for his conduct is
25 warranted.

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1 Therefore, the Guideline imprisonment range goes
2 from 168 to 210 months to a Guideline imprisonment range of
3 210 to 262 months.

4 Having been convicted at trial of Counts 1 and 2 of
5 the indictment, it is the judgment of the Court that you are
6 hereby committed to the custody of the bureau prisons to be
7 imprisoned for a total term of 225 months.

8 This term consists of 225 months on Count 1 and 120
9 months on Count 2 to run concurrently.

10 The Court finds this sentence is sufficient but not
11 greater than necessary to comply with the purposes of
12 sentencing, after considering the defendant's background, the
13 nature of the offense, and the defendant's behavior before
14 this Court.

15 This defendant has never even hinted at an
16 acceptance of responsibility, has blamed everybody and
17 everyone for his criminal activity, including the Canadian
18 law enforcement officers, the Canadian court, his attorney in
19 Canada, his attorneys who tried so desperately to help him
20 here in the United States, the prosecution, and even this
21 Court. You've made it extremely clear that, without a doubt,
22 you accept absolutely no responsibility for your actions.

23 I couldn't disagree with your attorney more when
24 she says that you're not a threat to commit this crime again.
25 You've demonstrated that you have a total lack of respect for

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1 the law and disdain for the law. That's in the Court's view
2 it is without question that, if given the opportunity, you
3 will do exactly what you want to do in any situation and you
4 are a very high risk to reoffend.

5 You attempted to transport thousands of images and
6 videos of child pornography into Canada and then later failed
7 to appear for your Canadian trial. You attempted to evade
8 justice and when you were arrested in the United States, you
9 blamed Canada. You blamed the U.S. government, law
10 enforcement for doing illegal acts to prosecute you.

11 Based on your evasion of the charges in Canada,
12 there is an active warrant for your arrest in Canada. You
13 have since demonstrated a total disregard of the law and a
14 complete lack of respect for this Court and any of the
15 attorneys who have tried to help you.

16 Based on these factors and your large collection of
17 child pornography, the Court has imposed a sentence that
18 reflects the seriousness of your crime, that promotes respect
19 for the law, and that provides you with adequate deterrence
20 from committing further crimes, and that protects the public.

21 While in custody, the Court recommends you receive
22 mental health treatment and sex offender treatment when, and
23 if, eligible.

24 With regard to restitution, the defendant shall pay
25 to the victims of this offense pursuant to 18, U.S.C.,

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1 Section 2259. The Court finds that, based on the indictment,
2 trial evidence, jury verdict and the government's memorandum
3 of law, the defendant knowingly transported and possessed the
4 images of Vicky, L.S., Cindy and Angela. And I'm referring
5 to docket numbers 10, 151, 152, 154, 178 and 183.

6 The Court also finds that, based on the
7 government's memorandum of law and exhibits, that each of the
8 four victims has outstanding losses caused by the continuing
9 traffic of their images in the following amounts:

10 Vicky has outstanding losses of approximately
11 \$500,875.

12 L.S. has outstanding losses of approximately
13 \$1,841,400.

14 Cindy has outstanding losses of approximately
15 \$1,344,963.

16 And Angela has outstanding losses between 366,000
17 and 587,000.

18 The Court finds, again, based on the government's
19 memorandum of law and exhibits, that, while it is far from
20 clear that this aggregation is required by *Paroline* in the
21 United States, even assuming that this aggregation is
22 required, the losses attributed solely to the group of
23 traffickers amounts to at least half the victims losses,
24 given that appears it is likely that the public's viewing of
25 the victim's images is the cause of victims losses as it is

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1 that the victims original abusers is the cause of those
2 losses.

3 Finally, the Court finds, again, based on the
4 government's memorandum of law and exhibits, that the amounts
5 of restitution that comport with the defendant's relative
6 role in the causal process that underlies each victim's
7 general losses are as follows:

8 \$3,000 for Vicky; two, \$3,000 for L.S.;, three,
9 \$3,000 for Cindy; and, four, \$3,000 for Angela.

10 The Court notes that it rendered this last finding
11 based on the careful consideration of the factors enumerated
12 in *Paroline*.

13 For example, the Court finds that the number of
14 past criminal defendants found to have contributed to the
15 victim's general losses are as follows:

16 502 with regard to Vicky, 149 with regard to L.S.,
17 123 with regard to Cindy; and 17 with regard to Angela.

18 The Court finds that there is no evidence before it
19 to support a reasonable prediction of the number of future
20 offenders likely to be caught and convicted for crimes
21 contributing to the victim's general losses, nor is there
22 evidence before it to support a reasonably reliable estimate
23 of the broader number of offenders involved.

24 The Court finds that the defendant did not
25 reproduce or distribute images of the victims. The Court

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1 finds that the defendant has no connection to the initial
2 production of the images.

3 The Court finds the defendant possessed the
4 following number of images of the victims:

5 Three videos or 222 images of Vicky; 3 images of
6 L.S., 1 image of Cindy, and 1 image of Angela.

7 While the defendant's per capita share of Vicky's
8 total losses amounts to only approximately \$500, the Court
9 finds that the amount should be increased to \$3,000 due to,
10 one, the above-average number of images of her that he
11 possessed and, two, the particularly explicit and offensive
12 nature of these images.

13 While defendant's per capita share of L.S.'s total
14 losses amounts to approximately \$6,138, the Court finds that
15 the amount should be diminished to \$3,000 due to a
16 below-average number of images of her that he possessed; and,
17 two, the fact that the government itself has estimated the
18 defendant's share as \$3,000.

19 While defendant's per capita share of Cindy's total
20 losses amounts to approximately \$5,423, the Court finds that
21 the amount should be diminished to \$3,000, due to the
22 below-average number of images of her that he possessed; and,
23 two, the fact that the government itself has estimated the
24 defendant's share as \$3,000.

25 Finally, while the defendant's per capita share of

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1 Angela's losses amounts to between \$20,333 and \$32,611, the
2 Court finds that the amount should be diminished to \$3,000
3 due the below-average number of images of her that he
4 possessed and the fact that the government itself has
5 estimated the defendant's share at \$3,000.

6 After considering the factors outlined in 18,
7 U.S.C., Section 3664(F)(2), including your financial
8 resources, other assets, restitution is to be paid
9 immediately.

10 The Court also finds that, based on your financial
11 resources, projected earnings and your financial obligations,
12 that you do have the ability to pay a fine. Therefore, you
13 shall pay to the clerk of court a fine in the amount of
14 \$40,000, which is due and payable immediately.

15 You shall also pay a special assessment of \$200,
16 which is due immediately.

17 Upon your release from imprisonment, you shall be
18 placed on supervised release for a term of 25 years on each
19 count to run concurrently.

20 While on supervised release, you shall not commit
21 another federal, state or local crime. You shall comply with
22 the standard conditions that have been adopted by this Court.
23 You shall comply with the following special conditions that
24 have been provided to you and your attorney.

25 The Court adopts these special conditions which

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1 will be made a part of this record.

2 Ms. Peebles, did you have an opportunity to review
3 those special conditions with Mr. Jenkins prior to this
4 proceeding.

5 MS. PEEBLES: Yes, your Honor, and we are objecting
6 to the imposition of the ten special conditions that have
7 been set forth in the addendum.

8 THE COURT: Very well, but you did review them with
9 him?

10 MS. PEEBLES: Yes, your Honor.

11 THE COURT: Mr. Jenkins, you saw those special
12 conditions prior to these proceedings today?

13 THE DEFENDANT: Yes, I believe I did.

14 THE COURT: Well, sir, you did or you didn't?

15 THE DEFENDANT: Yes, I think I did -- yes.

16 THE COURT: Sir, you need to understand that you're
17 going to be required to abide by those special conditions
18 once you're released and you're on supervised release.

19

20

21 * * *

22 (Special conditions distributed to defendant
23 and counsel are as follows:)

24 1. You shall register with the state sex offender
25 registry agency in any state where you reside, are employed,

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1 carry on a vocation or are a student.

2 2. You shall not have any direct contact with a
3 person under the age of 18 unless it is supervised by a
4 person approved of by the probation officer. You shall not
5 have indirect contact with a person under the age of 18
6 through another person or through a device (including a
7 telephone, computer, radio, or other means) unless it is
8 supervised by a person approved of by the probation officer.
9 You shall reasonably avoid and remove yourself from
10 situations in which you have any other form of contact with a
11 minor.

12 3. You shall not be in any area in which persons
13 under the age of 18 are likely to congregate, such as school
14 grounds, child care centers, or playgrounds, without the
15 permission of the probation officer.

16 4. You shall participate in a mental health
17 program, which will include, but will not be limited to,
18 participation in a treatment program for sexual disorders.
19 The program shall be approved by the United States Probation
20 Office.

21 5. Your supervised release may include
22 examinations using a polygraph, computerized voice stress
23 analyzer, or other similar device to obtain information
24 necessary for supervision, case monitoring, and treatment.
25 You shall answer the questions posed during the examination,

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1 subject to your right to challenge in a court of law the use
2 of such statements as violations of your Fifth Amendment
3 rights. In this regard, you shall be deemed to have not
4 waived your Fifth Amendment rights. The results of any
5 examinations shall be disclosed to the United States
6 Probation Office and the Court, but shall not be further
7 disclosed without the approval of the Court.

8 6. You shall contribute to the cost of any
9 evaluation, testing, treatment and/or monitoring services
10 rendered in an amount to be determined by the probation
11 officer based on your ability to pay and the availability of
12 third-party payments.

13 7. You shall not use or possess any computer or
14 any other device with online capabilities, at any location,
15 except at your place of employment, unless you participate in
16 the Computer Restriction and Monitoring Program. You shall
17 permit the United States Probation Office to conduct
18 periodic, unannounced examinations of any computer equipment
19 you use or possess, limited to all hardware and software
20 related to online use, (e.g., use of the World Wide Web,
21 email, instant messaging, et cetera.) These examinations may
22 include retrieval and copying of data related to online use,
23 and the viewing of pictures and movies which may be potential
24 violations of the terms and conditions of supervised release
25 from this computer equipment including any internal or

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1 external peripherals, internet-capable devices, and data
2 storage media. This computer equipment may be removed to the
3 Probation Office or to the office of their designee for a
4 more thorough examination. The Probation Office may use
5 and/or install any hardware or software system that is needed
6 to monitor your computer use, subject to the limitations
7 described above.

8 8. If your employment requires the use of a
9 computer, you may use a computer in connection with the
10 employment approved by the probation officer, at your place
11 of employment, provided you notify your employer of: (1) the
12 nature of your conviction; and (2) the fact that your
13 conviction was facilitated by the use of the computer. The
14 Probation Office must confirm your compliance with this
15 notification requirement.

16 9. You shall not incur new credit charges or open
17 additional lines of credit without the approval of the
18 probation officer.

19 10. The defendant shall apply all monies he
20 receives from any income tax refunds, lottery winnings,
21 judgments, and/or any other anticipated or unexpected
22 financial gains to the outstanding court-ordered financial
23 obligation.

24 * * *

25 THE COURT: You shall also forfeit to the United

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1 States all right, title and interest in the items listed in
2 the forfeiture allegation contained in the indictment and
3 further listed in the special verdict form.

4 Both parties have a right to appeal this sentence
5 in certain limited circumstances. You are advised to consult
6 with your attorney to determine whether or not an appeal is
7 warranted.

8 Any appeal must be filed within 14 days of the date
9 of the judgment being filed in this case.

10 Defendant will be remanded to the custody of the
11 United States Marshals in accordance with the terms of this
12 sentence.

13 (Discussion held off the record between courtroom
14 deputy and the Court.)

15 THE COURT: I want to make it clear for the record
16 that with the obstruction of justice enhancement, the Court
17 found that the offense level was 37 and the Criminal History
18 Category was I, which gave us the Guideline imprisonment
19 range of 210 to 262 months.

20 Anything further on behalf of the government?

21 MS. THOMSON: Your Honor, first I realize that this
22 matter has taken a great deal of the Court's time already,
23 but I would ask if the Court would just allow me to briefly
24 supplement the record with regard to the issue of
25 substitution of counsel, just in the interest of making sure

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1 that the record is complete and that the record reflects the
2 government's position with regard to the substitution of
3 counsel.

4 THE COURT: Go ahead.

5 MS. THOMSON: Thank you, your Honor.

6 Your Honor, the Court, to have substituted counsel,
7 must have found that there was good cause for that
8 substitution, as the defendant does not have an absolute
9 right to substitution of counsel.

10 The defendant didn't even make out a showing of
11 good cause in his submissions. If you actually look at what
12 he wrote with regard to counsel, he indicated on Page 2 of
13 his submission, public defender's office had done a
14 better-than-average job litigating within the "pretend
15 subject matter jurisdiction" the Northern District exerts.

16 He doesn't really explain any bases for the
17 substitution of counsel, other than to go on and say it was
18 wrong for Court to order the defendant to retain private
19 counsel, which previously happened, was wrong to dismiss the
20 attorney, which the Court did at the attorney's request, and
21 that the Court was incompetent and caused financial strain
22 and the Court's CJA panel of attorneys are not qualified or
23 are easily corrupted.

24 None of the allegations that he set forth or the
25 comments that he made rise to the level of good cause, the

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1 timeliness of the motion also again with counsel here, the
2 Court having allowed him that substitution of counsel.

3 There was no actual nature of a conflict that was
4 explained, just the defendant wanted, yet again, to have
5 things delayed so that he may or may not take an action which
6 we've been down that road before.

7 THE COURT: And, as I've indicated, all the
8 defendant's submissions are docketed and they're on the
9 record and he certainly agreed to have Ms. Peebles
10 participate this morning and so he has been represented and
11 he's had a fair and fall opportunity to represent himself and
12 the record that he would like.

13 MS. THOMSON: Thank you, your Honor.

14 THE COURT: I think that matter is sufficiently
15 covered.

16 Ms. Peebles, anything further on behalf of
17 Mr. Jenkins?

18 MS. PEEBLES: No, your Honor.

19 THE COURT: Thank you, Ms. Peebles, for your
20 representation.

21 Mr. Jenkins, anything further, sir?

22 THE DEFENDANT: I think you're a fraud and I think
23 this whole thing's a fraud. This is ridiculous.

24 THE COURT: Okay, sir. Good luck to you.

25 THE CLERK: Court is adjourned.

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(Proceedings adjourned at 10:56 a.m.)

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